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Department of Environmental Quality Office of the Secretary

Declaratory Ruling No. DR-09-004 (0910Pot2)

Subject: Proper interpretation of the term “facility” as used in Louisiana’s Solid Waste Regulations

Under the authority of the Louisiana Environmental Quality Act, La. R.S. 30:2001 *et. seq.*, and in accordance with LAC 33:I.1125.A, the Secretary of the Louisiana Department of Environmental Quality (the Department) hereby issues this Declaratory Ruling regarding the proper interpretation of the definition of the term “facility,” found in Louisiana Administrative Code, Title 33, Part VII, Section 115 (LAC 33:VII.115).

Background

By letter dated November 25, 2008, the North West St. Tammany Civic Association (NWSTCA) requested a declaratory ruling regarding the proper interpretation of the term “facility” as defined by the Department’s solid waste regulations. In particular, the NWSTCA expressed concerns over the scope of the term “facility” as it relates to the buffer zone requirements of LAC 33:VII.508.B. The NWSTCA Petition also raises issues previously addressed in Declaratory Ruling No. DR-08-003, directed specifically to the buffer zone requirements of LAC 33:VII.508.B. The NWSTCA’s Petition is further directed to the application of the term “facility” to a proposed non-processing transfer facility that, if built, will be operated by IESI Louisiana Corp., in St. Tammany Parish, Louisiana.

The NWSTCA’s original request was not submitted in conformity with the Department’s rules governing the issuance of declaratory rulings because it lacked the affidavit required by LAC 33:I.1117.A.9. A letter advising the NWSTCA of this defect in its Petition was issued by the Department on January 30, 2009. By correspondence dated March 16, 2009, and received by the Department on March 19, 2009, the NWSTCA submitted the required affidavit.

Analysis

In the NWSTCA’s Petition, two regulations are specifically addressed. As previously noted, there is a discussion of LAC 33:VII.508.B, which, at the time of Petition submittal, stated:

New facilities in which construction has commenced after June 20, 2007, shall comply with a buffer zone requirement of not less than 200 feet between the facility and the property line. Facilities transferring only nonputrescible waste shall comply with a buffer zone requirement of not less than 50 feet between the facility and the property line. A reduction in the buffer zone requirement shall be

allowed only with the permission, in the form of a notarized affidavit, of all adjoining landowners. A copy of the notarized affidavit waiving the 200-foot or 50-foot buffer zone requirement shall be entered in the mortgage and conveyance records of the parish or parishes in which the adjoining landowners' properties are located. The affidavit shall be maintained with the records of the facility. No storage of solid waste shall occur within a facility's buffer zone.

The wording of this section created some confusion, and the Department has recently amended the regulation to clarify its intent. However, while the NWSTCA's Petition initially references LAC 33:VII.508.B, the actual subject of the Petition is the term "facility" found in the first and second sentences of the buffer zone regulation. This term is explicitly defined by the solid waste regulations. In particular, LAC 33:VII.115 defines the term "facility" as follows:

Facility—actual land and associated appurtenances used for storage, processing, and/or disposal of solid wastes, but possibly consisting of one or more units. (Any earthen ditches leading to or from a unit of a facility and that receive solid waste are considered part of the facility to which they connect, except for ditches lined with materials capable of preventing groundwater contamination. The term *facility* does not necessarily mean an entire industrial manufacturing plant.)

This definition is largely self-explanatory. However, because this definition references other terms defined by the solid waste regulations, the analysis is also contingent on those definitions. In particular, the following terms are relevant to the proper interpretation of the term "facility":

Unit of a Facility—designated area of a facility wherein solid waste is, has been, or will be processed, stored, or disposed of.

Process—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process.

Site—the physical location, including land area and appurtenances, of an existing or proposed storage, processing, or disposal facility. A *site* may consist of a number of facilities, each subject to a permit to process or dispose of solid waste.

Non-Processing Transfer Station—a solid waste facility where solid waste is transferred from collection vehicles to other vehicles for transportation without processing.

Storage—the containment of solid waste on surfaces capable of preventing groundwater contamination in a means not constituting processing or disposal.

Transport—to move solid waste off-site to a non-processing transfer station or a collection, processing, or disposal facility.

Based on the foregoing definitions, the term “facility” encompasses only the actual area of a site where waste treatment, processing, storage or disposal takes place. While such a “facility” can consist of one or more individual waste management units, the term will not necessarily extend to the entirety of the location or “site” where waste processing occurs. Offices, green spaces, production/manufacturing areas and other areas where non-waste management activities are conducted do not fall within this definition. Further, the term does not apply to on-site roadways leading to a “facility,” so long as those roadways are used for transporting waste to the area where it is actually stored, processed, disposed or treated.

With respect to roadways, the Department recognizes that there is an ancillary issue regarding the length of time a waste containing vehicle may be parked/stationary on a roadway within a site before such activity is considered storage (as opposed to transport). However, such issues will typically have to be determined on a case-by-case basis, based on factors such as the length of time vehicles are stationary and the reason they are stationary (equipment failure, high volume/traffic, etc.).

With respect to the NWSTCA’s concerns over activities involving white goods, yard trash and recyclable material, it is noteworthy that any areas of a waste management site where such solid waste is stored or processed will be “units” or “facilities” as the terms are defined by the solid waste regulations.¹ Accordingly, the boundary of such waste management units would need to be located outside the buffer zone contemplated by LAC 33:VII.508.B. However, areas where non-waste materials, including materials specifically exempted from regulation as solid wastes, are stored will not fall into the definition of the term “facility,” and will not be subject to buffer zone requirements.

While the NWSTCA Petition also suggests that truck staging areas and truck washing areas be viewed as “appurtenances” to “facilities,” this labeling is misplaced. “Appurtenance” is not a term defined by the solid waste regulations. However, Black’s Law Dictionary, 7th Edition, defines the term “appurtenance” as “something that belongs or is attached to something else.” Similarly, looking to commonly used definitions, an appurtenance is defined as “a subordinate part or adjunct” (Merriam-Webster on-line dictionary). Given these definitions, as well as the context in which the term is used in the solid waste regulations, “appurtenances” will typically be limited to ancillary equipment directly associated with a particular waste management unit or facility (piping, pumps, earthen ditches, etc.). However, areas such as those identified in the NWSTCA Petition may well fall within the term “facility” depending on the activities conducted therein. For example, as noted above, areas used as roadways where waste containing trucks are left unattended or parked for lengths of time clearly unrelated to active “transport,” may be viewed by the Department as storage areas (and thus falling within the definition of “facility”).

With respect to truck washing, it is noteworthy that there are sections of the solid waste regulations specifically directed to this activity. In particular, truck washing regulations are included in a section governing waste transporters, LAC 33:V11.505.B. These requirements apply to any truck washing areas irrespective of whether processing, collection or disposal facilities are also found at the same site. However, because truck washing is regulated as a transportation activity, areas where this activity is conducted will not be considered “facilities” for the purposes of LAC 33:VII.508.B’s buffer zone requirements.² However, if the vehicles still contain appreciable quantities of waste (as opposed to road grim), or if waste is allowed to accumulate in these areas, the Department will likely view these areas as out of compliance with the solid waste regulations.

In accordance with LAC 33:I.1149.B.3, this declaratory ruling shall be published in the *Louisiana Register*.

Please note that, pursuant to LAC 33:I.1145 and La. R.S. 30:2050.21 an aggrieved person may appeal this Declaratory Ruling to the 19th Judicial District Court, Parish of East Baton Rouge. A petition for review must be filed in the district court within 30 days of notice of the action.

Date: September 8, 2009
Signed: Harold Leggett, Ph.D.
Secretary

¹While non-processing transfer stations do not require a solid waste permit, it is noteworthy that the sorting of recyclable materials such as white goods will be subject to regulation as waste processing (and require a solid waste permit).

²As previously noted, the definition of “facility” encompasses only areas where waste treatment, storage, processing or disposal takes place.

For more information contact Elliott Vega, Office of the Secretary, Legal Affairs Division, at (225) 219-3985.

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